

JUDGE ROBINSON

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

07 CV 6517

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NGM INSURANCE COMPANY,

Docket No.

Plaintiff,

-against-

BLAKELY PUMPING, INC. d/b/a ASSENTIAL PUMPING,  
BRIAN J. BLAKELY, PETER J. SLINGERLAND, NANCY  
SLINGERLAND and PROGRESSIVE CASUALTY  
INSURANCE COMPANY,

COMPLAINT

Defendants.  
-----X

Plaintiff, NGM INSURANCE COMPANY, by their attorneys, **BRILL**,  
ASSOCIATES, P.C., as and for their Complaint herein alleges upon information and belief

FILED  
U.S. DISTRICT COURT  
2007 JUL 19 PM 4:15  
S.D. N.Y.

**INTRODUCTION**

1. Plaintiff NGM INSURANCE COMPANY brings this action to secure a Declaratory Judgment resolving the rights, duties and obligations of the above referenced parties under a policy of insurance issued by Plaintiff to BLAKELY PUMPING, INC. d/b/a ASSENTIAL PUMPING regarding a claim asserted by PETER J. SLINGERLAND and NANCY SLINGERLAND for personal injuries and loss of services which occurred on November 3, 2005.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction under 28 U.S.C. 2201-02 and 28 U.S.C. 1332.
3. Venue in this District is proper in that plaintiff transacts business in this District.
4. The amount in controversy exceeds \$75,000.00.

**PARTIES**

5. NGM INSURANCE COMPANY (“NGM”) is a foreign insurance company of the State of Florida duly admitted to write liability insurance policies in the State of New York pursuant to Section 1113(a) of the Insurance Law on December 31, 1931 with a principal place of business at 4601 Touchton Road East, Suite 3400, Jacksonville, Florida 32245.

6. BLAKELY PUMPING, INC. is a domestic business corporation of the State of New York formed on June 9, 2004, with a principal place of business at 11 Mary Lou Lane, Shokan, New York 12481.

7. BRIAN J. BLAKELY is an Executive Officer of BLAKELY PUMPING, INC. and resides at 133 Piney Point Road, Boiceville, New York 12412.

8. PETER J. SLINGERLAND and NANCY SLINGERLAND are individuals residing at 21 Tall Oaks Drive, Kingston, New York 12401.

9. PROGRESSIVE CASUALTY INSURANCE COMPANY is a foreign insurance company duly admitted to write personal automobile liability policies in the State of New York on March 8, 1977 with a principal place of business at 6300 Wilson Mills Road, W33, Mayfield Village, Ohio 44143.

**FACTS**

10. On or about July 13, 2005, NGM, in consideration of certain underwriting information provided to it and premiums paid, issued and delivered to BLAKELY PUMPING, INC. a business owners insurance policy known and designated as policy number MPV52824 which was effective until July 13, 2006 (hereinafter “the BOP policy” or the “NGM policy”).

11. The BOP policy contained liability limits of \$1,000,000.00 per occurrence.

12. That at all relevant times hereinafter mentioned, the BOP policy excluded liability coverage to BLAKELY PUMPING, INC. on account of bodily injury or property damages

arising out of the ownership, maintenance or use of any auto owned, operated or loaned to BLAKELY PUMPING, INC.

13. That on or about November 3, 2005, defendant BRIAN BLAKELY was the owner and operator of a 2004 Dodge truck and was utilizing his personal vehicle in connection with the business operations of BLAKELY PUMPING, INC.

14. That at all relevant times hereinafter mentioned, and upon information and belief, defendant PROGRESSIVE CASUALTY INSURANCE COMPANY issued an automobile liability policy to defendant BRIAN BLAKELY for the 2004 Dodge Truck.

15. That upon information and belief and at all relevant times hereinafter mentioned, BLAKELY PUMPING, INC. did not purchase, acquire or obtain any Commercial Automobile Insurance Coverage insuring the use and operation of its vehicles used in connection with its business operations.

16. That on November 3, 2005, following issuance of NGM and PROGRESSIVE's respective policies, defendant PETER SLINGERLAND was injured in a two car motor vehicle accident while operating his 2003 Hyundai with defendant BRIAN J. BLAKELY, who was operating the aforementioned 2004 Dodge truck.

17. That upon information and belief and according to news reports of the incident, PETER SLINGERLAND sustained severe injuries in the accident and was flown by helicopter to Westchester Medical Center for treatment.

18. That upon information and belief and at all relevant times hereinafter mentioned, the vehicle that was operated by BRIAN J. BLAKELY at the time of the accident was not a scheduled or covered automobile on the BOP policy issued by NGM.

19. That upon information and belief and at all relevant times hereinafter mentioned, the vehicle that was operated by BRIAN J. BLAKELY at the time of the accident was owned personally by BRIAN J. BLAKELY or members of his household.

20. That upon information and belief and at all relevant times hereinafter mentioned, at the time of the accident BRIAN J. BLAKELY was employed as the Vice President of BLAKELY PUMPING, INC.

21. That upon information and belief and at all relevant times hereinafter mentioned, BRIAN J. BLAKELY was an Executive Officer of BLAKELY PUMPING, INC. as that term is defined under the BOP policy issued by NGM.

22. That upon information and belief and at all relevant times hereinafter mentioned, including the time of the accident, BRIAN J. BLAKELY was using his individually owned automobile in furtherance of the business pursuits of BLAKELY PUMPING, INC.

23. That on December 7, 2005, PETER J. SLINGERLAND and NANCY SLINGERLAND filed a Summons and Verified Complaint against BRIAN J. BLAKELY in the Supreme Court of the State of New York, County of Ulster, under Index No. 4124/07, seeking a judgment awarding them monetary damages for personal injuries and loss of services (the "personal injury case") sustained as a result of the November 3, 2005 accident.

24. That on or about January 10, 2006, NGM was provided with its first notice of the claims asserted by PETER J. SLINGERLAND and NANCY SLINGERLAND.

25. That on or about February 1, 2006, NGM lawfully and timely disclaimed any duty to defend or indemnify BRIAN J. BLAKELY as there was no coverage under the BOP policy issued to BLAKELY PUMPING, INC. for bodily injury or property damage arising out of the ownership, maintenance or use of any autos owned, operated, rented or loaned to BLAKELY PUMPING, INC. under the "owned auto" exclusion of the policy.

26. That on February 13, 2006, PETER J. SLINGERLAND and NANCY SLINGERLAND filed an Amended Summons and Verified Complaint against BRIAN J. BLAKELY and BLAKELY PUMPING, INC. d/b/a ASSENTIAL PUMPING in the Supreme Court of the State of New York, County of Ulster, under Index No. 4124/07, seeking a judgment awarding them monetary damages for personal injuries and loss of services (the “personal injury case”) sustained as a result of the November 3, 2005 accident.

27. That on or about March 23, 2006, NGM lawfully and timely disclaimed any duty to defend or indemnify BRIAN J. BLAKELY and/or BLAKELY PUMPING, INC. as there was no coverage under the BOP policy issued to BLAKELY PUMPING, INC. for bodily injury or property damage arising out of the ownership, maintenance or use of any autos owned, operated, rented or loaned to BLAKELY PUMPING, INC. under the “owned auto” exclusion of the policy.

28. That following NGM’s disclaimer on March 23, 2006 under the owned auto exclusion, and by letter dated July 24, 2006, defendants PETER J. SLINGERLAND and NANCY SLINGERLAND, through their attorneys, Goldstein & Metzger, LLP, have now asserted that coverage exists by virtue of a “Hired and Non-Owned Auto” Endorsement attached to NGM’s BOP policy.

29. A copy of that Endorsement is attached hereto as Exhibit A and is incorporated by reference herein.

30. That at all relevant times hereinafter mentioned the “Hired and Non-Owned Auto” Endorsement attached to the BOP policy does not provide coverage to Executive Officers of BLAKELY PUMPING, INC. for any auto owned by any executive officer of the corporation or any member of his or her household.

31. That notwithstanding the clear and unambiguous terms and conditions of the BOP policy issued by NGM, Defendants PETER SLINGERLAND and NANCY SLINGERLAND have expressed their intention to seek satisfaction of any judgment obtained in the personal injury case against BRIAN J. BLAKELY and/or BLAKELY PUMPING, INC. from NGM in a direct action following conclusion of the personal injury action.

**AS AND FOR A FIRST CAUSE OF ACTION**

32. Plaintiff NGM INSURANCE COMPANY repeats, reiterates and realleges each and every allegation contained in the paragraphs numbered 1 through 31 of this complaint inclusive with the same force and effect as if herein again set forth at length.

33. That an actual controversy has arisen between Plaintiff and Defendants as to whether Plaintiff is obligated under the Policy to defend and/or indemnify BRIAN J. BLAKELY and/or BLAKELY PUMPING, INC. with respect to the claims asserted by PETER J. SLINGERLAND and NANCY SLINGERLAND in the personal injury action.

34. That the claims submitted to Plaintiff by BRIAN J. BLAKELY and/or BLAKELY PUMPING, INC. fall squarely within the owned auto exclusion of the BOP policy issued by Plaintiff.

35. Furthermore, coverage is not provided under the "Hired and Non-Owned Auto" Endorsement attached to the BOP policy to Executive Officers of BLAKELY PUMPING, INC. for any auto owned by those officers or any member of his or her household.


36. Plaintiffs have no adequate remedy in this case other than to seek an adjudication that it is not obligated to defend or indemnify BRIAN J. BLAKELY and BLAKELY PUMPING, INC. under its BOP policy and will be aggrieved unless the Court makes an immediate declaration of the liability and obligations of NGM under the policy.

**WHEREFORE**, plaintiff demands judgment adjudicating its obligations under its BOP policy issued to BLAKELY PUMPING, INC. and that this court:

- a. determine and declare that BRIAN J. BLAKELY and BLAKELY PUMPING, INC. are not covered under the BOP policy for any judgment that may be obtained in the personal injury action; and
- b. determine and declare that BRIAN J. BLAKELY and BLAKELY PUMPING, INC. are not entitled under the BOP Policy to any defense of the claims brought by Peter and Nancy Slingerland or indemnification for settlement or judgment obtain by the plaintiffs in the personal injury action; and
- c. determine and declare that Plaintiff is not responsible to reimburse BRIAN J. BLAKELY and BLAKELY PUMPING, INC. for any attorneys fees, costs and other expenses incurred to date for the defense of the personal injury action; and,
- d. grant all such other and further relief as to the court seems just and proper.

Dated: New York, New York  
July 19, 2007

**BRILL & ASSOCIATES, P.C.**

By:   
Haydn J. Brill (HB3040)  
Attorneys for Plaintiff  
111 John Street, Suite 1070  
New York, New York 10038  
(212) 374-9101  
File No: 1279-NGM

To:

BLAKELY PUMPING, INC. d/b/a ASSENTIAL PUMPING, INC.  
11 Mary Lou Lane  
Shokan, New York 12481

BRIAN J. BLAKELY  
133 Piney Point Road  
Boiceville, New York 12412

PETER J. SLINGERLAND and NANCY SLINGERLAND  
21 Tall Oaks Drive  
Kingston, New York 12401

PROGRESSIVE CASUALTY INSURANCE COMPANY  
c/o New York State Superintendent of Insurance  
25 Beaver Street  
New York, New York 10006